



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels
SANTE/E4/DI/gb(2020)2614359

***By registered letter with
acknowledgement of receipt¹***

Mr Alexander Langkutsch
Herrenhausstraße 16
12487 Berlin
Germany

Advance copy by e-mail:
[ask+request-7750-
917eda8c@asktheeu.org](mailto:ask+request-7750-917eda8c@asktheeu.org)

Dear Mr Langkutsch,

Subject: Your application for access to documents – Ref GestDem No 2020/1408, 2020/1541 and 2020/1564

We refer to your e-mail dated 9 March 2020 in which you make a request for access to documents, registered on 10 March 2020 under reference number 2020/1408, and to your e-mail dated 16 March 2020 in which you make a request for access to documents, registered on 17 March 2020 under reference number 2020/1541.

We refer also to your e-mail dated 12 March 2020 in which you make a request for access to documents, registered on 18 March 2020 under reference number 2020/1564, which has been reattributed from DG Agriculture to DG Health and Food Safety.

As the three requests have similar scope, we have decided to process them together.

We further refer to our e-mail dated 31 March 2020 extending the time limit for responding to your request pursuant to Article 7(3) of Regulation (EC) No 1049/2001² (or “the Regulation”).

1. Scope of your request

¹ According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm, by email, receipt of the present e-mail.

² Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

In your requests, you asked for access to the following documents concerning the active substances chlorpyrifos and chlorpyrifos-methyl:

- **Under Gestdem 2020/1541:**

- “- Correspondence, including emails, between officials and NGO’s or other organisations working on the assessments and/or nonrenewals of Chlorpyrifos and Chlorpyrifos-methyl from the years 2013 to 2019;
- This includes (but is not limited to) correspondence between NGO’s or other organisations and any members or representatives of SCoPAFF during this period that mentions or pertains to Chlorpyrifos and Chlorpyrifos-methyl between 2013 to 2019
- Please specifically include all correspondence between the following representatives of PAN Germany, PAN Europe, HEAL, ecolologistas en accion, Générations Futures and EU officials or representatives involved in the assessment and/or (non)renewal of Chlorpyrifos and Chlorpyrifos-methyl, including any members or representatives of SCoPAFF, which mentions or pertains to Chlorpyrifos and Chlorpyrifos-methyl, between the years 2013 and 2019;
- Please also include all agendas or minutes of meetings with these parties during the years 2013 and 2019 that mentions or pertains to the assessments or renewals of Chlorpyrifos and Chlorpyrifos-methyl: PAN Germany; PAN Europe; HEAL; Ecolologistas en accion and Générations Futures”

- **Under Gestdem 2020/1564:**

- “- Correspondence, including emails, between officials and industry representatives working on the assessments and/or renewals of Chlorpyrifos and Chlorpyrifos-methyl from the years 2013 to 2019;
- This includes (but is not limited to) correspondence between industry representatives or lobbyists and any members or representatives of your department during this period that mentions or pertains to Chlorpyrifos and Chlorpyrifos-methyl between 2013 to 2019;
- Please specifically include all correspondence between the following representatives and lobbyists of Corteva/Dow/DuPont and EU officials or representatives involved in the assessment and/or renewal of Chlorpyrifos and Chlorpyrifos-methyl, including any members or representatives of your department, which mentions or pertains to Chlorpyrifos and Chlorpyrifos-methyl, between the years 2013 and 2019;
- Please also include all agendas or minutes of meetings with these parties during the year 2013 and 2019 that mentions or pertains to the assessments or renewals of Chlorpyrifos and Chlorpyrifos-methyl: DOW Europe, Corteva Agriscience, DuPont de Nemours International and EPPA SA;
- Additionally, please include protocols from AGRI committee between 2013 und 2019 that mentions or pertains to Chlorpyrifos and Chlopryrifos-methyl.”

- **Under Gestdem 2020/1408:**

“- Correspondence, including emails, between officials and industry representatives working on the assessments and/or renewals of Chlorpyrifos and Chlorpyrifos-methyl from the years 2013 to 2019;

- This includes (but is not limited to) correspondence between industry representatives or lobbyists and any members or representatives of SCoPAFF during this period that mentions or pertains to Chlorpyrifos and Chlorpyrifos-methyl between 2013 to 2019;
- Please specifically include all correspondence between the following representatives and lobbyists of Corteva/Dow/DuPont and EU officials or representatives involved in the assessment and/or renewal of Chlorpyrifos and Chlorpyrifos-methyl, including any members or representatives of SCoPAFF, which mentions or pertains to Chlorpyrifos and Chlorpyrifos-methyl, between the years 2013 and 2019;
- Please also include all agendas or minutes of meetings with these parties during the year 2019 that mentions or pertains to the assessments or renewals of Chlorpyrifos and Chlorpyrifos-methyl: DOW Europe; Corteva Agriscience; DuPont de Nemours International and EPPA SA.”

2. Assessment of the documents

We have identified 39 documents as falling under the scope of your request.

You will find in annex to this letter a list with all the documents identified containing the result of the assessment on their content on the basis of Regulation (EC) No 1049/2001.

Having examined the documents, we have come to the conclusion that:

- Partial access can be granted to 37 documents, numbered 1 to 37 as their full disclosure is prevented by an exception to the right of access laid down in Article 4 of the Regulation.
- No access can be granted to documents numbered 38 and 39 as they fall entirely under the exception of Article 4(2).

The documents that can be partially released and the list of documents containing the result of the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001 are published on the following Commission webpage:

<https://webgate.ec.europa.eu/dyna/extdoc>

You can view these documents by entering the GestDem reference of your request ("2020/1541", "2020/1564" and "2020/1408") in the search box at the top of the page.

Alternatively, you can click on "view documents per request" and search on the left column for the GestDem reference of your request ("2020/1541", "2020/1564" and "2020/1408").

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

3. Reasons for (partial) refusal

a. Protection of personal data

Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001

With regard to documents No 1 to 37, a complete disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- the handwritten signatures of natural persons.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

In addition, documents numbered 12 and 13 contain names of persons involved in testing on vertebrate animals. The originator of the documents - Corteva Agrosience, has been consulted as provided for by Article 4(4) of Regulation (EC) No 1049/2001 and objected to the disclosure, by stating that the disclosure of the above-mentioned parts of the documents would reveal directly and indirectly the identity of persons involved in testing on of vertebrate animals. Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001 and Article 63(2)(g) of Regulation (EC) No 1107/2009 prevents the disclosure of the above-listed documents.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Therefore documents No 1 to 37 are disclosed redacted of the parts containing personal data.

b. Protection of court proceedings

Protection of court proceedings and legal advice- Article 4(2), second indent, of Regulation (EC) No 1049/2001

Article 4(2), second indent, of Regulation (EC) No 1049/2001 provides that ‘the institutions shall refuse access to a document where disclosure would undermine the protection of: [...] court proceedings [...] unless there is an overriding public interest in disclosure

In its judgment in Case T-84/03, the Court of First Instance³ underlined that the exception provided for in Article 4(2), second indent, protects two distinct interests: court proceedings and legal advice⁴.

In the case at hand, the refusal of access to documents numbered 38 and 39 is based on the fact that they are submitted in pending legal proceedings before the European Court of Justice.

The originator of the documents-law firm Fieldfisher, has been consulted as provided for by Article 4(4) of Regulation (EC) No 1049/2001 and objected to their disclosure, by stating that the disclosure of the above-mentioned documents would undermine the protection of court proceedings. Namely, the consulted third party mentions the following two proceedings pending before the General Court: Cases T-77/20 *Ascenza and Afrasa v Commission* and T-77/20 *R Ascenza and other v Commission*.

In particular, the third party stated that the documents in question constitute evidence submitted to the General Court in the course of Court proceedings and as such their disclosure would severely infringe the rights of defence of their client, as well as potentially represent a breach of the Rules of Proceedings of the General Court.

Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001, prevents the disclosure of the above-listed documents.

We have considered whether partial access could be granted to documents 38 and 39 in accordance with Article 4(6) of the Regulation. However, it follows from the assessment made above that these documents are entirely covered by the above-mentioned exception.

4. Overriding public interest

The exception laid down in Article 4(2) of Regulation (EC) No 1049/2001 applies, unless there is an overriding public interest in disclosure of the documents. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. it must outweigh the decision-making process protected under Article 4(3) of Regulation (EC) No 1049/2001.

In your request, you did not provide any arguments that there is an overriding public interest in disclosure. For document numbered 27 to which access is refused partially, we do not consider that the right of information overrides the interests protected by Article 4(3) of Regulation (EC) No 1049/2001 (the specific confidentiality rules applicable to comitology procedures for the decision-making procedures). On the contrary, we

³ Currently: the General Court.

⁴ Judgment of 23 November 2004, *Turco v Council*, T-84/03, EU:T:2004:339, paragraph 65.

consider that the protection of the decision-making process, especially the confidentiality of Member States' positions expressed under the comitology procedure, prevails over the public interest of disclosure.

5. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Anne Bucher